



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2013 Biennium

<b>Bill #</b>	HB0334	<b>Title:</b>	Generally revise workers' compensation
<b>Primary Sponsor:</b>	Reichner, Scott	<b>Status:</b>	As Amended in Senate Committee

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2             | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
<b>Expenditures:</b>					
General Fund	\$0	(\$1,465,989)	(\$1,465,989)	(\$1,465,989)	(\$1,465,989)
State Special Revenue	\$0	(\$881,076)	(\$915,551)	(\$910,826)	(\$906,005)
Federal Special Revenue	\$0	(\$337,909)	(\$337,909)	(\$337,909)	(\$337,909)
Other	\$0	(\$313,462)	(\$313,462)	(\$313,462)	(\$313,462)
MSF - Proprietary	\$48,500	\$0	\$0	\$0	\$0
MUS - Self Insurance	\$0				
			----- Savings - But Unable to Quantify -----		
<b>Revenue:</b>					
General Fund	\$0	(\$593,270)	(\$593,270)	(\$593,270)	(\$593,270)
State Special Revenue	\$0	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
MSF - Proprietary	\$0	\$0	\$0	\$0	\$0
MUS - Self Insurance	\$0	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance</b>	<u>\$0</u>	<u>\$872,719</u>	<u>\$872,719</u>	<u>\$872,719</u>	<u>\$872,719</u>

**Description of fiscal impact:** This legislation has a number of provisions that, in aggregate, will create a significant net reduction in the cost of the overall Montana workers compensation system. The bill provisions apply to claims on or after July 1, 2011, and ultimately:

1. Expands certain benefits while reducing other benefits
  - a. Increases permanent partial disability (PPD) weeks by 25 weeks
  - b. Provides for payment of waiting period after 21 days of temporary total disability (TTD)
  - c. Only Class II or greater impairment ratings, without wage loss, are payable with no payment of Class I impairment ratings without wage loss
2. Allows insurers to approve or designate the treating physician
  - a. The injured worker will seek initial medical treatment from the health care provider that they choose. If the person who initially sees the injured worker agrees to be responsible for assuming the responsibilities for coordinating care that is defined for a treating physician, they become the initial treating physician. Any time after an insurer accepts liability for the claim, the insurer may approve

the physician chosen by the injured worker to be the designated treating physician or the insurer may designate a new treating physician who has agreed to assume the responsibilities defined for a treating physician.

3. Alters fee schedule rates for treating physicians and health care providers
4. Creates a Stay at Work / Return to Work assistance policy, fund, and policyholder assessment
5. Accepted medical benefits may be settled upon agreement of the insurer and the claimant, and the approval of the Department of Labor (DoL). This provision applies to any date of injury.
6. Terminates medical benefits, except for PPD's and prosthetics, after 60 months with provisions for re-opening.

## FISCAL ANALYSIS

### Assumptions:

#### Montana State Fund

1. The National Council on Compensation Insurance (NCCI) was requested to analyze this legislation and estimate the impact on benefit cost in the workers' compensation system.
2. The provisions of the bill were analyzed in isolation, without taking into account the interaction between various components.
3. The following provisions of the bill have been analyzed by NCCI on a 'pure loss' basis that does not include loss adjustment expense which is normally a component of 'loss costs'.

Provision	Section of the Bill	High Overall % Impact	High Overall \$ Impact	Low Overall % Impact	Low Overall \$ Impact
Termination of Medical Benefits	Sections 10 & 20	-18.2%	Not Provided by NCCI	-3.8%	Not Provided by NCCI
Choice of Physician	Section 24	-14.3%	-\$59M	-4.4%	-\$18M
Permanent Partial Awards	Section 9	-2.7%	-\$11M	-1.3%	-\$5M
Physician Reimbursement	Section 24	-0.1%	-\$1M	+0.1%	+\$1M
Retroactive Period	Section 13	+0.3%	+\$1M	+0.4%	+\$2M
Permanent Partial Maximum Weeks	Section 9	+0.8%	+3M	+1.0%	+\$4M

4. If some or all of these provisions are ultimately enacted, the combined interactions and impacts may result in an overall impact that differs from a simple mathematical combination of the individual impacts described above.
5. NCCI has analyzed the following sections and determined that they are inestimable or do not have a significant cost impact.

Section of Bill	Section(s) in Law	Description
Sec. 3 and Sec. 8	39-71-118 & 407	Definition of Course and Scope
Sec. 10	39-71-704	Treatment Guidelines
Sec. 14	39-71-741	Settlements

6. The final impact on MSF rates will be dependent on NCCI's loss cost filing.
7. NCCI will complete a loss-cost filing for Montana which, per law and administrative rule, MSF will use as the basis for determining rates.
8. The MSF percentage rate change will differ from the percentage change in pure loss payments estimated by NCCI as investment earnings, overhead and other factors must be taken into account when establishing rates. MSF rates are offset by expected investment income.
9. MSF is required in law, 39-71-2316(1)(e), MCA, to charge premiums so that the State Fund will be neither more nor less than self-supporting.
10. All medical benefits paid will be in accordance with the DoL's established medical fee schedule and percentages in 39-71-110(4-6), MCA, regardless of the date of injury, but based on date of service.
11. There are no specific fiscal impacts regarding settlements or lump-sum payments associated with Old Fund claims other than the opportunity to settle accepted medical benefits if mutually agreed. However, Old Fund claims with potential for settlement or lump-sum payments have previously been identified and settled when appropriate. Therefore, further Old Fund medical claim settlements may not develop at the same rate as more recent claims.
12. There is an estimated \$48,500 in FY11 expenditures that will be incurred by MSF to complete computer system changes required from the physician and healthcare provider payment terms. MSF estimates 450 hours at \$108 per hour to complete the necessary changes and testing to MSF and our 3<sup>rd</sup> party bill payer's systems.
13. The 'Stay at Work / Return to Work' assistance fund will initially be funded by a \$100,000 transfer from the Administration fund established in 39-71-201(1), MCA.
14. Effective for policies written or renewed in fiscal year 2012, a premium surcharge of 0.00082 will be assessed.
15. MSF's projection of FY 2012 gross premium is \$175,681,000, based on 12/31/10 data and prior to any legislative changes to the Workers' Compensation Act. This would equate to \$144,058 being assessed to MSF policyholders in FY 2012 with a premium surcharge of 0.00082.
16. In subsequent years the 'Stay at Work / Return to Work' assistance fund will be funded through an assessment of all plan No. 1 employers, plan No. 2 employers, and plan No. 3 employers, based on a proportionate share of money expended from the fund for the calendar year preceding the year in which the assessment is collected.
17. MSF may process the FY 2012 'Stay at Work / Return to Work' assistance fund assessment using temporary procedures until the system changes are complete prior to the mailing of the FY 2013 premium notices. Establishing a temporary process for charging the assessment is expected to take approximately 120 hours for system requirements, development and testing. If a temporary process is necessary MSF will complete by adjusting workloads of internal staff resources.
18. The expenditures associated with the newly created medical review panel are expected to be funded by the DoL Administration Fund via the premium surcharge.
19. The Legislative Audit Division will annually provide the Insurance Commissioner the results of the audit and rate review as provided in sections 39-71-2361 and 39-71-2362, MCA. There are no new audit items and no increase in audit expenditures are expected as a result of this legislation.

**Department of Labor and Industry (DLI)**

20. The following provisions of the bill were analyzed by NCCI in isolation, without taking into account the interaction between various components.
21. NCCI has updated the pricing on the components provided in HB 334 as amended. The Department of Labor and Industry is committed to utilizing the mid-point of any pricing NCCI provides (for analysis) as follows:

Provision	Bill Section	Mid-Point of impact in %	Mid point of impact in \$\$
Permanent Partial Awards	Section 9 (MCA 39-71-703)	- 2.0%	- \$8.0M
Permanent Partial Maximum Weeks	Section 9 (MCA 39-71-703)	+0.9	+\$3.5M
Termination of Medical Benefits	Section 10 (MCA 39-71-704)	-11.0%	- \$45.3M
Retroactive Period	Section 13 (MCA 39-71-736)	+0.35%	+\$1.5M
Choice of Physician	Section 24 (MCA 39-71-1101)	-9.4%	-\$38.5M
Physician Reimbursement	Section 10 (MCA 39-71-704)	-3.0%	- \$12.5M
<b>Total</b>		-24.15%	\$-99.3M

22. NCCI has analyzed the following sections and determined that future loss cost filings could potentially reflect a cost impact to the system but reserves the right to “price” those until more experience is in place.

MCA	Bill Section	Description
39-71 -118 & 407	Section 3 & 8	Definition of Course and Scope
39-71-741	Section 14	Settlements
39-71-704	Section 10	Treatment Guidelines

23. Section 9 establishes the eligibility for permanent partial disability (PPD) awards. An injured worker with an impairment rating greater than 0 and an actual wage loss will continue to be eligible for a PPD award. An injured worker with an impairment rating greater than a class 2 impairment under the 6th edition of the American Medical Association Guide to the Evaluation of Permanent Impairment would continue to receive an impairment only award. Injured workers with less than a class 2 impairment and no wage loss would no longer receive an impairment only award. Approximately 1,600 of the 3,000 injured workers per year who receive an impairment rating less than class 2 but have no wage loss would no longer receive an impairment award. The mid-point of the NCCI projected loss cost decrease is -2.0% or -\$8.0M.
24. Section 9 increases the maximum weeks of PPD entitlement from 375 weeks to 400 weeks. The department estimates that 1,600 of 3,000 injured workers per year who receive an impairment rating less than class 2 with no wage loss will no longer receive any permanent partial benefits. The remaining 1,400 workers will have an addition 25 weeks included in the base formula for calculating their permanent partial benefit amount. The mid-point of the NCCI projected loss cost increase for this benefit enhancement is +0.90% or +\$3.5M.
25. Sections 10 and 29 define the conditions for termination of medical benefits and the procedures for reopening medical benefits. The mid-point of the NCCI projected loss cost decrease from this new provision on claim closure is -11.0% or -\$45.3M.
26. Section 13 refers to the retroactive period of a claim. The current law prevents an injured worker from receiving compensation for the first 4 days of injury regardless of length of time the incapacity lasts. HB 334 establishes a retro-active status that begins the first day of total wage loss if the employee is unable to work in any capacity for 21 days or longer. The mid-point of the NCCI projected cost increase is +.35% or a \$1.5M.

27. Section 24 defines the choice and designation of a treating physician. The mid-point of the NCCI projected loss cost decrease from this new provision on choice of treating physician is -9.4% or -\$38.5M.
28. Section 10 establishes that the reimbursement rate set by the department for medical services may not be less than the rate in effect on December 31, 2010. Assuming the rate in effect on December 31, 2010 is frozen and used for reimbursement of medical services beginning July 1, 2011, NCCI projects a loss cost savings of -3.0% or \$12.5M.
29. Section 10 mandates that the Department of Labor and Industry (DLI) establish evidence based utilization and treatment guidelines for primary and secondary medical services. The department will provide a web based application with search capabilities to allow medical providers and payers to determine which treatments are supported by evidence and allowable within the guideline structure. \$131,000/yr for development, maintenance, and warranty service for secure software based application (included in 2013 biennial executive budget) that meets the Montana Information and Technology Act (MITA)
30. Section 10 mandates DLI to hire a medical director to conduct an independent medical review process. In conjunction with qualified health care providers the medical director shall make annual assessment of utilization and treatment guidelines to consider relevant adaptations to the database (2% inflation included FY 14-15).
- Medical Director 0.5 FTE with \$104,400 salary and \$22,433 benefits. \$3,100.00 for computer and new office setup \$12,593 in rent and indirect costs: Total = \$142,526
  - Compliance Tech 1.00 FTE with \$31,528.61 salary and \$13,642.69 benefits. \$3,100.00 for computer and new office setup and \$7,932.39 in rent and indirect expenditures = \$45,171.30 in PS and \$11,032.39 in operating. Total = \$56,203.69
31. Section 28 requires DLI to create a medical status form to be provided to health care providers. The costs of developing a hard copy would be: 8.5" x 14" 3-part form with a distribution of 75,000 or 100,000. The higher numbers are because the form would be given to the worker at each visit, so 25,000 injuries times estimated 3 or 4 visits. 75,000 = \$6,094.00. The cost to develop and transmit an "e-document" or electronic version only would consist of 40 hours database development X \$97.50 per hour = \$3,900 (non recurring): Total=\$9,994
32. Section 29 of the bill requires a medical director to preside over a medical review panel to evaluate the re-open clause contained in the bill. DLI estimates 220 claims per year may qualify as candidates to re-open based on medical necessity. The cost to develop the data requirements and the business process for the medical review functions would consist of 250 hours database development X \$97.50 per hour = \$24,375 (non-recurring) and 50 hours of annual maintenance X \$97.50 per hour = \$4,875: TOTAL=\$29,250
33. Section 29 contains provisions for reopening of medical benefits and a medical director to preside over a medical review panel to evaluate the re-opening petitions. DLI estimates 220 claims per year may qualify as candidates to re-open based on medical necessity. The medical panel would consist of 2 peer physicians. The compensation for 2 medical review physicians follows:
- 220 cases, 4 hours/case, \$100/hour = \$88,000/year X 2 physicians = \$176,000/year.
  - Travel costs for per diem, meal allowance, and lodging allowance total 28,800: Total = \$204,800.
34. For FY 2012 and beyond, the department combines the full effect of all 6 NCCI priced components: -\$8M (PPD), +\$3.5M (PPD duration), -\$45.3M (termination of benefits), +\$1.5M (retro-active period eligibility), -\$38.5M (choice of physician), -\$12.5M (physician reimbursement). If analyzed singularly the changes could have an aggregate impact of -\$99.3 M or -24.1%. As indicated in Technical Note #2, the NCCI pricing was done individually without taking into account the interaction between the various components. It also does not take into consideration the effect of the loss adjustment expense that is adopted by the Montana State Fund. For purposes of analysis and the fiscal impact on state agency budgets, the department is predicting that the premium reduction for state agencies for policies beginning July 1, 2011 will be -20.0%.

35. Therefore DLI's estimate of the overall impact would be -\$82.4M or -20.0%. This would reduce system wide premium costs from \$412M<sup>1</sup> to \$329.6 M.
36. State agencies could see the -20.0% decrease in premiums or -\$3.44M as soon as FY12. State of Montana workers' compensation premiums are \$17.2M for FY10. HB 334's impact would then follow to be: \$3.44M reduction FY 12 through FY 15. Total = \$13.76M savings to the State agencies.
37. Workers' compensation premiums for state agencies are based on the actual amounts paid for personal services. To estimate the impact by fund type, the department relies on the percentage of fund type used to fund personal services for the most recent completed fiscal year. For FY 2010, SABHRS (\$17,206,040) reflects the following breakdown by fund type to fund personal services: General fund (42%), State special revenue (38%), federal special revenue (11%), and other (9%). The department uses this breakdown of funding sources to calculate the impact of either increase or decreases in the workers' compensation premiums for state agencies by fund source and is included in the fiscal summary section.

### State Auditor's Office

38. According to the National Council on Compensation Insurance (NCCI), the estimated impact of this bill will be 15% to 25% on workers compensation loss costs, rates, and premiums. For the effects of this bill a midpoint of their range in the derivation of the impact or 20% will be utilized.
39. The decrease in the premium tax collections that will no longer go to the general fund will be approximately \$593,270 as follows:

Anticipated Workers Compensation	
Premiums	107,867,191
Premium Tax Rate	<u>0.0275%</u>
	2,966,348
Twenty Percent Reduction	<u>0.20%</u>
	593,270

### Montana University System

40. This is an analysis on the MUS self-insured fund:
- Permanent Partial Awards: This proposal would entitle the worker to a PP disability award, only if that worker has an actual wage loss and a Class 2 or higher class of permanent impairment as determined by the second printing of the sixth edition of the AMA Guides to Evaluation of Permanent Impairment. A review of 5 years of MUS work comp data shows that MUS would have saved approximately \$143,824, or 1.6% of total dollars incurred, if Class 1 impairment awards were not eligible for payment during that time. MUS would expect to achieve similar savings in the future if this provision of HB 334 is enacted.
  - Permanent Partial Max. Weeks - This proposal would extend the cap on PPD benefits from 375 weeks to 400 weeks. A review of 5 years of MUS Work comp data shows that if PPD benefits would have been capped at 400 weeks during that time, MUS would have spent an additional \$6,596, or 0.07% in total costs incurred, over that 5 year period. MUS' analysis was limited to actual impairment rating and cost data and did not consider the ancillary issues identified in NCCI's narrative, such as potential changes in claimant behavior due to increased benefits. MUS would expect to experience similar cost increases in the future if this provision of HB 334 is enacted
  - Termination of Medical Benefits - Under this proposal, medical benefits for work-related injuries would terminate 60 months after the date of injury or diagnosis of an occupational disease. The proposal does not apply to a worker who is permanently totally disabled. MUS does not have sufficient data to evaluate the impacts of this provision in HB 334. MUS has operated a self-

<sup>1</sup> NCCI teleconference Jan 25<sup>th</sup> 2011, HB334 Sponsor-Representative Reichner (House Business and Labor Committee)  
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funded workers compensation program since July 2003. Only claims that occurred in a fairly narrow window between July 2003 and June 2005 would have a claim experience greater than 5 years for evaluation. As of 12/31/2010, MUS had only 3 claims open longer than 5 years and all were PTD and therefore would not be subject to the 60 month termination of benefits.

- d. Retroactive Period – HB 334 proposes to pay for the first 4 days of time loss if an employee continues to be unable to work at 21 days; currently the first 4 days of time loss are unpaid. MUS estimates that this change would have an extremely small impact on the cost of claims to the MUS. In the past 5 years, adding 4 days of additional time loss payments to MUS claims with time loss 21 days or more would have resulted in an additional \$26,800 dollars, approximately 0.29% of the total costs incurred, over that 5 year period. MUS' analysis was limited to actual days lost and days paid data and did not consider the ancillary issues identified in NCCI's narrative, such as a potential increase in utilization due to increased benefits. MUS would expect to experience similar cost increases in the future if this provision of HB 334 is enacted.
- e. Choice of Physician - MUS Self-Funded Workers' Compensation Program not does have sufficient data to evaluate the impacts from the Termination of benefits provision in HB 334.
- f. Physician Reimbursement - MUS Self-Funded Workers' Compensation Program not does have sufficient data to evaluate the impacts from the Termination of benefits provision in HB 334.
- g. Definition of Course and Scope - MUS Self-Funded Workers' Compensation Program not does have sufficient data to evaluate the impacts from the Termination of benefits provision in HB 334. The impact of the provision to provide Stay-at-Work/Return-to-Work (SAW/RTW) assistance is expected to have a minimal financial impact to the MUS. The Montana Board of Regents (BOR) enacted policy 713.2 in May 2003 requiring that Modified Duty or Early Return To Work (ERTW) opportunities be provided for all employees with temporary physical restrictions identified by the treating physician. Each campus of the MUS has a coordinator who works with the employee, department claim adjuster and provider to identify and provide alternative work opportunities appropriate for the physical condition of the employee.
- h. Treatment Guidelines – MUS can't determine or quantify the fiscal impacts of this section of HB 334.

	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
<b><u>Fiscal Impact:</u></b>					
FTE (DOLI)	0.00	1.50	1.50	1.50	1.50
<b><u>Expenditures:</u></b>					
DOLI Personal Services	\$0	\$172,003	\$172,003	\$172,003	\$172,003
DOLI Operating Expenses	\$0	\$270,769	\$236,294	\$241,019	\$245,840
Employee Benefits Statewide	\$0	(\$3,441,208)	(\$3,441,208)	(\$3,441,208)	(\$3,441,208)
MSF - Operating	\$48,500	\$0	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<b>\$48,500</b>	<b>(\$2,998,436)</b>	<b>(\$3,032,911)</b>	<b>(\$3,028,186)</b>	<b>(\$3,023,365)</b>
<b><u>Funding of Expenditures:</u></b>					
General Fund (01)	\$0	(\$1,465,989)	(\$1,465,989)	(\$1,465,989)	(\$1,465,989)
State Special Revenue (02)	\$0	(\$881,076)	(\$915,551)	(\$910,826)	(\$906,005)
Federal Special Revenue (03)	\$0	(\$337,909)	(\$337,909)	(\$337,909)	(\$337,909)
Other	\$0	(\$313,462)	(\$313,462)	(\$313,462)	(\$313,462)
MSF - Proprietary	\$48,500	\$0	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<b>\$48,500</b>	<b>(\$2,998,436)</b>	<b>(\$3,032,911)</b>	<b>(\$3,028,186)</b>	<b>(\$3,023,365)</b>
<b><u>Revenues:</u></b>					
General Fund SAO (01)	\$0	(\$593,270)	(\$593,270)	(\$593,270)	(\$593,270)
State Special Revenue (02)	\$0	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
MSF - Proprietary	\$0	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>(\$593,270)</b>	<b>(\$593,270)</b>	<b>(\$593,270)</b>	<b>(\$593,270)</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>					
General Fund (01)	\$0	\$872,719	\$872,719	\$872,719	\$872,719
State Special Revenue (02)	\$0	\$881,076	\$915,551	\$910,826	\$906,005
Federal Special Revenue (03)	\$0	\$337,909	\$337,909	\$337,909	\$337,909
Other	\$0	\$313,462	\$313,462	\$313,462	\$313,462
MSF - Proprietary	(\$48,500)	\$0	\$0	\$0	\$0

**Effect on County or Other Local Revenues or Expenditures:**

- Workers compensation premiums and rates of Montana local governments, counties, and school districts will be impacted in a similar fashion as the State of Montana and its agencies.

**Long-Term Impacts:**

- The impact of the legislation will be long term. The projected cost savings for both the public and private sector employees will be reflected in the experience portion of the NCCI loss cost filings as the impact of the law unfolds.

**Technical Notes:****Montana State Fund**

- Sections of the legislation identified in assumption 5 above may result in additional benefit savings to the workers' compensation system.

**Department of Labor and Industry**

- DLI has made no adjustments for inflation/deflation or business cycle variability.

3. The Montana workers compensation system is dynamic and the future adaptations to the systemic changes as outlined in HB 334 were not considered in the analysis. To illustrate: the savings are not straight line by adding each component. They have been individually priced as if it was the only change in the system. If they are all adopted in a package, the impact is diminished for each item as a part of the package. For example, if the closure of medical benefits is passed, significantly fewer medical treatments would fall under the obligation of workers' compensation insurers. Therefore, the projected savings from U & T Guidelines would not be as high as if the U & T Guidelines were implemented with no other changes. Each piece interacts in this way and the savings from each is reduced if part of a package with all of the pieces.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*